

**UNITED STATES DISTRICT COURT**

## **DISTRICT OF NEVADA**

\* \* \*

BART STREET III, LLC,

Plaintiff,

VS.

ACC ENTERPRISES, LLC, *et al.*,

## Defendants.

2:17-cv-00083-GMN-VCF

## **ORDER**

MOTION TO AMEND [ECF No. 161]

Before the Court is Plaintiff Bart Street III’s Motion for Leave to Amend. (ECF No. 161). For the reasons discussed below, Plaintiff’s motion is granted.

## BACKGROUND

In the original complaint, Plaintiff generally alleges that Defendants ACC Enterprises, ACC Industries, and Calvada Partners breached two promissory notes, including the failure to repay the notes. (ECF No. 1 at 6-8). The original complaint lists claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and unjust enrichment. (*Id.* at 7-12).

Plaintiff now moves to amend the complaint based on the Court’s ruling on the parties’ motion to dismiss and motion for summary judgment. (ECF No. 161 at 2-3). The proposed amended complaint focusses on Defendants’ alleged failure to repay the promissory notes rather than the other breaches listed in the original complaint. (ECF No. 161-1). In their response to the motion to amend, Defendants “do not object to Plaintiff seeking or being granted leave to amend the Complaint.” (ECF No. 162 at 2). “Defendants merely seek confirmation from the Court that its defenses...remain available and applicable moving forward.” (*Id* at 3).

1 ANALYSIS

2 “[A] party may amend its pleading only with the opposing party's written consent or the court's  
3 leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). “Five factors  
4 are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay,  
5 prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended  
6 the complaint.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004).

7 Plaintiff has shown that the amendment is brought in good faith within the timeline set by the  
8 Court. (ECF No. 159 at 1). The amendment is not futile and will not prejudice Defendant. The  
9 amendment is designed to streamline the case, which will assist the parties and Court. In addition, under  
10 LR 7-2(d), “[t]he failure of an opposing party to file points and authorities in response to any motion...  
11 constitutes a consent to the granting of the motion.” Therefore, Plaintiff's motion to amend is granted.

12 Defendants seem to be asking the Court for a pre-judgment of the viability of their defenses. The  
13 Court will not address the merits of Defendants' potential defenses, as the defenses are not before the  
14 Court in Plaintiff's motion to amend. Defendants may raise defenses in their answers to the amended  
15 complaint as appropriate. *See Coppola v. Smith*, No. 1:11-CV-1257-AWI-BAM, 2015 WL 2127965, at  
16 \*2-3 (E.D. Cal. May 6, 2015) (discussing answers to amended complaints); *see also Sierra Dev. Co. v.*  
17 *Chartwell Advisory Grp.*, No. 13-cv-602-BEN-VPC, 2016 WL 6828200, at \*2 (D. Nev. Nov. 18, 2016).

18 Accordingly, and for good cause shown,

19 IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to Amend (ECF No. 161) is  
20 GRANTED. Plaintiff has until December 7, 2018 to file its amended complaint.

22 DATED this 30th day of November, 2018.

23 

24 CAM FERENBACH  
25 UNITED STATES MAGISTRATE JUDGE